



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
180 FIFTH STREET EAST, SUITE 700
ST. PAUL, MN 55101-1678

October 9, 2020

Regulatory File No. MVP-2016-00537-EMN

Dale Clark
Big Hollow Wetland, LLC
8467 Arbor Trace Drive
Verona, Wisconsin 53593

Dear Mr. Clark:

We have reviewed your Draft Mitigation Bank Instrument (DMBI) for the proposed Big Hollow Mitigation Bank, located in Sauk County, Wisconsin. As you were previously informed, the Corps, in consultation with the Interagency Review Team (IRT), initiated its review of the draft MBI on June 22, 2020. This letter summarizes the status of the Corps review including our assessment of the general adequacy of the DMBI and any outstanding issues that remain from the review process.

Based on the content your draft MBI and mitigation plan, comments from the IRT, and other information we considered during our review we have determined that the bank, as currently proposed, is unlikely to be approved as a source of mitigation for Section 404 authorized impacts. We do not recommend preparation of a final MBI for this bank site unless the substantive issues outlined in the four comments below are addressed and the MBI and mitigation plan are revised accordingly. You must submit a revised DMBI explaining how you have addressed these issues prior to any future submittals. Failure to do so would likely result in a decision that the Corps cannot approve the bank.

1. Compensation Types. You state in the DMBI that wetland re-establishment is proposed for 172.65 acres of fresh wet meadow. However, the following information from the plan indicates that there is limited potential to restore wetlands at the bank site:
 - The majority of the site is mapped with soils that are not hydric (Watseka loamy sand and Sparta loamy sand). The hydric component of these soils is the Granby soil, which is typically found in depressions and drainages.
 - There is a lack of these depressions and drainages at your bank site which indicates that the majority of the site is comprised of soils that are not hydric.
 - The soil profile data you provided indicates the majority of the site lacks field indicators of hydric soils.
 - You state in the plan that the site has only recently shown evidence of ponding or flooding due to catastrophic flood events and abnormally high precipitation levels in recent years.

Based on this information, the areas where scrapes would be constructed outside of existing wetlands and in soils that are not hydric must be characterized as creation (or wetland establishment). You must provide a rationale to support that the establishment of wetlands in these creation areas is appropriate while considering the existing soils, topography, current drainage patterns, and other baseline conditions that are present. You must significantly reduce the amount of wetland creation as we would not support a

plan that has the majority of the credits derived from creation. In addition, credit ratios must be adjusted for any creation areas as 1:1 is not appropriate for this compensation type. We recommend that you use a credit ratio of 0.25:1 to 0.5:1 for any proposed creation areas.

2. Wildlife Hazard Assessment. You state in the draft MBI that a wildlife hazard assessment was completed to determine if there was any risk to a nearby airport with the construction of the proposed bank site. Based on the assessment, a wildlife hazard monitoring plan was developed, but it is unclear if this plan was approved by the USDA, WisDOT, and other coordinating agencies. You must provide sufficient documentation that the appropriate agencies have approved this wildlife hazard monitoring plan by having them sign the plan or provide written correspondence stating that they approve of the monitoring plan.
3. Engineering. You have proposed to construct shallow scrapes and fill portions of the regional drainage ditch to restore wetland hydrology within the proposed fresh wet meadow community. However, there is a lack of information on the number of scrapes within this area and there are no engineered plans showing the proposed scrapes, ditch fill, and other grading work described in the mitigation plan. You must provide engineered drawings showing where all earth disturbing work would occur (including any borrow areas) and include the size and dimensions (in square feet or acres) of this work. Due to the concerns with potential wildlife hazards to the nearby airport and our concerns that the majority of the site would be creation, we recommend that any scrapes be small (under 0.1 acre) and shallow (6 inches or less in depth) and the overall scrape area shown on Figure 9 should be reduced in size.
4. High Capacity Well. There is a high capacity well that will remain functioning along the southwest boundary of the bank site. This is problematic in that even if the well isn't functioning at full capacity, there will still be a draw on the groundwater table which may not allow you to successfully restore wetland hydrology at your bank site. If you decide to move forward with this bank proposal, you must disable the high capacity well to alleviate any concerns on its potential to negatively affect the restoration of wetland hydrology at your bank site.

If you choose to address the above issues and submit a revised DMBI and mitigation plan, your submittal must also address the comments below and include a narrative that explains how each of these issues/comments are addressed.

5. Proposed Limited Liability Company (LLC). You state in the plan that the Big Hollow LLC would be the sponsor. This may be problematic if the LLC does not have sufficient property rights to the parcel of land within the bank site. You must address the following comments prior to submittal of the revised DMBI:
 - a) If you choose to have the LLC as the sponsor (rather than yourself), you must draft a Statement of Authority as this is essential to be able to delegate an individual to sign the MBI and ensure that the LLC complies with all the terms and conditions of the MBI.
 - b) The LLC must possess sufficient control of the real estate to be able to fulfill its promises under the MBI. All parties within the LLC must grant an easement (or some other satisfactory document) to provide sufficient control and property rights to the LLC to ensure that the bank can be constructed, monitored, and maintained in accordance with the MBI.

- c) You must ensure that all documentation of the LLC is updated to be in accordance with current Minnesota state statutes, including Chapter 322C. It is necessary for the Sponsor to demonstrate how the documentation provided meets the current state statutes.
6. Crediting. You must make the following revisions to the draft MBI:
- The Credit Table in Section 2.1 states that there is 1.11 acres of existing wetland that would be rehabilitated. However, Figure 8 shows that there is actually 3.23 acres of delineated wetlands within the bank site. You must revise the Credit Table to account for all the delineated wetland acres that would be rehabilitated at your bank site.
 - The Credit Table also shows that you have proposed to establish 18.96 acres of upland buffer. You should state in the plan that any upland buffer acreage that meets performance standards would be allocated to fresh wet meadow as this is the only wetland community proposed at the bank site.
7. Performance Standards (PS). You must make the following revisions to your mitigation plan:
- The hydrology PS you proposed is not sufficient to determine if the target wetland hydrology would be achieved for the proposed wetland communities. You must revise the hydrology PS to measure the duration of the water table (not saturation) within the upper 12 inches of the soil surface to be consistent with current procedures. Please reference the procedures titled *Target Hydrology and Performance Standards for Compensatory Mitigation Sites* for guidance on appropriate language to use for the revised hydrology PS. This document can be found on our public website at:
<https://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation>
 - You must include an area threshold (square footage per acre or for each community) for the bare ground metric of your interim and final vegetation PS.
 - You must state that Interim Veg PS 2 needs to be met for two consecutive years and this two consecutive year requirement is applied after Interim Veg PS 1 has been met for at least one full growing season. For example, Interim Veg PS 1 could potentially be met in the first full growing season. If this occurs, then the bank site must meet all the performance metrics under Interim Veg PS 2 for two consecutive years (monitoring years 2 and 3) to successfully achieve this performance standard. This is consistent with current procedures and is meant to show a trend towards meeting final PS by establishing a predominately native, hydrophytic plant community at the bank site.
8. Credit Release Schedule. Due to the inherent risk and level of uncertainty associated with wetland creation, you must first successfully meet the hydrology PS before any interim vegetation PS can be met. Please include language in the credit release schedule that states the first interim vegetation PS cannot be met until the hydrology PS has been successfully achieved within all establishment areas.
9. Monitoring Plan. You must fully address the Wisconsin DNR's comments regarding the proposed monitoring plan and methods of vegetation sampling in the attached IRT

comments (Comment #4). You must also clearly identify how you will determine the start of the growing season (Comment #11).

10. Long-term Management (LTM). You must fully address the Wisconsin DNR's comments outlined in Comment #11 and Comment #14 regarding your proposed long-term management plan.

11. Title Search. You must address the Wisconsin DNR's comment regarding the submittal of a "Search and Hold, Minimum Commitment" title review as requested in Comment #12 in the attached IRT comments.

Due to the complexity inherent in developing adequate performance standards and mitigation plans, I strongly recommend that you engage my staff to work through the issues identified in this letter prior to submitting the revised DMBI.

If you have any questions, please contact Eric Norton in our Stevens Point office at (651) 290-5879 or eric.m.norton@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

A handwritten signature in dark ink, appearing to read "Desiree Morningstar", written in a cursive style.

Desiree Morningstar
Chief, Technical Services Branch

Enclosure: IRT Comments and Statement of Authority Example

cc w/o enclosures:

Kerryann Weaver, EPA - Region 5
Thomas Nedland, Wisconsin DNR
Leslie Day, COE

From: [Nedland, Thomas S - DNR](#)
To: [Norton, Eric M CIV CEMVP CEMVD \(USA\)](#)
Cc: [Weaver, Kerryann](#); [Eggers, Steve D CIV CEMVP CEMVD \(US\)](#); [Pelloso, Elizabeth](#)
Subject: [Non-DoD Source] Wisconsin DNR Comments - Big Hollow Draft MBI/CSP
Date: Monday, July 27, 2020 3:03:53 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hello,

Thank you for allowing Wisconsin DNR the opportunity to comment on the above mentioned document. Prior to sending our comments, DNR reviewed the April 29, 2020 Draft MBI/CSP document prepared by Heartland Ecological Group. DNR offers the following comments. Please note that some of our comments are requests/requirements, while others are only recommendations.

Requests/Requirements (required actions)

1. The draft MBI proposes a specific credit release for upland buffer communities. The credits associated with upland buffers must be allocated to the appropriate wetland type. In this case, since only one wetland community is being proposed, all upland buffer credits should be allocated as wet meadow.
2. After reading through the information provided in the draft CSP, DNR requires the majority of this site be classified as creation/wetland establishment, rather than the re-establishment classification that is currently proposed. DNR's rationale is as follows:
 - a. The site is predominately mapped as Watseka soils, which are not hydric soils, with the exception of small inclusions found in depressions and drainageways.
 - b. Depressions or drainageways have limited to no distribution on the site.
 - c. It is DNR's understanding that the landform on which the site is located is not normally flooded, and has only recently undergone groundwater flooding due to the catastrophic flood events associated with record breaking storms/floods and abnormally high precipitation levels over multiple years.
 - d. It is DNR's understanding that the majority of the site is not flooded or ponded for long periods of time during the growing season in most years.
 - e. Most conclusively, the limited soil profile documentation provided in the draft CSP indicates the majority of the site lacks field indicators of hydric soil.
3. DNR requires the proposed credit allocation provided in the draft CSP be altered to reflect wetland creation/establishment standards, rather than the proposed re-establishment standards currently proposed. This request is being made based upon the information provided in Item 2, above. DNR suggests the prospective banker consider the following while developing their proposed credit allocations:
 - a. Crediting at a ratio of 1:1 for creation sites is rare
 - b. Crediting for creation sites should be based upon the success risks associated with the proposed project, the appropriateness of the proposed plant community to the surrounding landscape, and the connectivity to other wetlands/aquatic resources.
 - c. Based upon information provided in the draft CSP, and guidance provided in the Guidelines for Wetland Compensatory Mitigation in Wisconsin, a credit allocation between 0.25:1 and 0.5:1 appears appropriate for the proposed wetland creation portions of the site.
4. DNR requests additional information regarding the proposed vegetation monitoring protocols. Two protocols

are proposed (one early in the growing season and one later), but it is unclear how the two different protocols will be utilized for reporting purposes. For example, which protocol will be used to document fulfillment of performance standards - the fixed plot data, the meander data, or both? Since two survey periods are proposed, how will the different species abundances from each survey be utilized? For example, what if species X has 50% relative coverage during the June survey, but only 25% coverage during the September Survey?

a. DNR recommends a meander survey be completed in June to document areas that need INN species treatments or other management activities, and a more comprehensive survey is completed in August or September to document fulfillment of performance standards. Under this proposal, data from the June survey would not be reported in monitoring reports. The August or September survey could incorporate both plots and a meander survey, or any other method that appropriately surveys the site. The key considerations should be ensuring a representative survey, that adequately characterizes the site, is completed.

b. If a timed meander survey is utilized, cover class categories should be avoided.

c. DNR is open to suggestions for adequately addressing an appropriate sample size. For example, perhaps the consultant would be willing to incorporate a species area curve into their sampling protocol, or to utilize a point intercept sampling method instead of the fixed vegetation points to increase sampling efficiency.

5. DNR requests this site utilizes similar vegetation performance measures to recently approved wetland mitigation banks.

6. DNR requests additional information regarding the proposed final NNI relative areal cover vegetation standards. In specific, DNR requests that information be provided to support the proposed 80% standard. This request is being made because the CSP states that nearly the entire site is comprised of annual crops. If that is the case, why doesn't the prospective banker believe that a higher standard, such as 90% relative areal cover of NNI, is achievable? For example, are there INN species in the surrounding watershed that will make meeting a higher standard challenging?

7. The proposed wetland hydrology performance standard only requires saturation for 8 to 16 days, based on a comparison of WETS data with the proposed standard's language. As proposed, this standard may fail to fulfill minimum wetland hydrology standards, meaning the site may not develop into a jurisdictional wetland. DNR requests the proposed wetland hydrology performance standards be revised to ensure that a jurisdictional wetland develops on-site.

a. One way to ensure the site will develop into a jurisdictional wetland would be to utilize the target wetland hydrology performance standards that have been developed for use in the U.S. Army Corps of Engineers St. Paul District. This includes the use of either a reference wetland or utilization of generic standards that have been developed based upon best available science.

b. DNR encourages the prospective mitigation bank sponsor to consider utilization of a reference wetland, with the understanding that the reference wetland would not necessarily need to be located on site, but rather could be located on a site with similar soils and that is located within the same subwatershed and/or ecoregion as the proposed mitigation bank.

8. DNR requests clarification regarding the proposed hydrologic regime for the site.

a. Is the prospective mitigation banker proposing a water table within 12 inches of the soil surface be utilized to measure wetland hydrology performance standards, or is the capillary fringe above a water table (saturation) being proposed as the measurement?

b. If a capillary fringe is proposed as the measurement, it is unclear how this would be measured, and if it is feasibly possible to measure.

c. The expected hydrologic regime of the site should be clearly stated in the draft CSP. For example, based upon the modeling that was completed at the site, what is the expected timing and duration at which a water table will be within 12 inches of the soil surface during the growing season?

9. Based upon Items 7 and 8 above, DNR requests the wetland hydrology performance standard be fulfilled before any other performance standard credit releases are awarded.

10. DNR requests that the method that will be used for determining the start of the growing season be specified (documentation of green-up, soil/groundwater temperatures, or use of the WETS Table).

11. Burning is mentioned as a maintenance activity. DNR requests that the following language, or language similar in meaning, be added to the CSP: "Any burning completed on-site will follow all applicable state and local

guidelines and abide by all pertinent regulations.”

12. A title search will need to be completed prior to DNR’s signing of the conservation easement. DNR requests that the prospective mitigation banker provide a Search and Hold, Minimum Commitment (a.k.a. Dummy Commitment) title review to DNR as soon as possible. If any encumbrances or easements are identified by the title search, an exhibit should be produced that shows the relation of the easement/encumbrance to the proposed wetland mitigation bank boundaries.

13. A wildlife hazard assessment was completed for the proposed mitigation bank to determine the risk that creation of a wetland mitigation bank could pose for nearby airports. Based on the assessment, a wildlife hazard monitoring plan was developed. It is unclear if the proposed wildlife hazard monitoring plan is supported by USDA, WisDOT, and other pertinent agencies. DNR requests that the appropriate agencies sign the May 17, 2019 letter Heartland Ecological Group sent to Kerrie Hauser regarding this matter.

14. DNR requests additional information regarding the proposed long-term management plans for the site. In specific, DNR requires the following information be provided:

a. What long-term maintenance activities are expected at the site? For example, the draft CSP mentions monitoring for erosion concerns, but will other actions need to be completed? Examples could include periodic mowing or burning to maintain the plant community, as well as berm inspections and repairs.

b. What will be the long-term goal for the site? For example, will the current plant community be maintained, or does the prospective bank sponsor propose to allow natural succession to occur? This consideration will be important in identifying the long-term maintenance activities that will occur on site.

c. A discussion of how the long-term maintenance of the site will be funded should be included. One potential funding option could be to place a percentage of each credit sale into an escrow account that will be used to fund the site’s long-term maintenance needs.

15. DNR requests the proposed seed lists be appropriately titled to ensure an accurate understanding by all involved parties.

Recommendations (not requirements – for consideration purposes only)

1. DNR encourages the prospective mitigation bank sponsor to consider whether the site can meet typical wetland hydrology performance standards (28 consecutive days of a water table within 12 inches of the soil surface or two periods of 14 consecutive days of a water table within 12 inches of the soil surface), or the minimum wetland hydrology criteria described in the Regional Supplements (14 consecutive days with a water table within 12 inches of the soil surface). If neither of these standards can be met by the site’s current design, DNR would not support approval of the site as a wetland mitigation bank. The rationale being that the site would not fulfill all three wetland parameters required to meet jurisdictional wetland requirements.

2. DNR strongly advises the bank sponsor to consider complete removal of the adjacent irrigation pump, as it is unclear whether the site will meet minimum wetland hydrology standards under the current design. Failing to address this issue could lead to erroneous conclusions that may prevent fulfillment of performance standards at the site.

3. DNR recommends that a pump test, or other equivalent method, is conducted to verify the modeled effect of the high capacity well located adjacent to the site. Failing to address this issue could lead to erroneous conclusions that may prevent fulfillment of performance standards at the site.

4. Mr. Clark is proposing to construct the site himself. DNR encourages the prospective bank sponsor to consider whether he has the experience necessary to complete all of the required activities, given the large amount of precision grading that is proposed for the site (several areas proposed to undergo less than 1 foot of topographic alteration). DNR supports Mr. Clark’s completion of the construction activities, so long as the site is built per plan with minimal design alterations. Failing to construct the site per plan will result in delayed or rejected credit releases, and could prevent fulfillment of performance standards at the site.

5. All of the proposed seed lists indicate a near equal distribution of graminoid and forb species. DNR recommends the seed list be skewed more heavily to long-lived, perennial graminoid species, that are reflective of local remnant reference communities, to promote the establishment of plant species that have the ability to outcompete aggressive INN plant species. In addition to the long-lived perennial grasses currently proposed for the site, DNR recommends that rhizomatous sedges and rushes be included as a major component of the seed list. If a comparable reference site is not available, DNR recommends Vegetation of Wisconsin be used to generate a potential seed list.

6. *Coreopsis tripteris* is not considered a native plant species in Wisconsin. If it becomes established at the site,

this species will likely be considered an INN plant species, which could affect the ability of the site to fulfill vegetation performance standards. DNR recommends this species be removed from the seed list.

7. DNR encourages the prospective mitigation bank sponsor to utilize the template letter of credit language that has been jointly developed by the U.S. Army Corps of Engineers and Wisconsin DNR. Failure to utilize the template language could result in delays, as staff from DNR's Legal and Finance programs would need to review and approve any other proposed language.

Please let me know if you have any questions about our comments.

Sincerely,

Tom

We are committed to service excellence.

Visit our survey at [Blockedhttp://dnr.wi.gov/customersurvey](http://dnr.wi.gov/customersurvey) [Blockedhttp://dnr.wi.gov/customersurvey](http://dnr.wi.gov/customersurvey) to evaluate how I did.

Tom Nedland, PWS

Wetland Mitigation Coordinator – Waterways/External Services

Wisconsin Department of Natural Resources

107 Sutliff Avenue, Rhineland, WI 54501

Phone: 920-286-3739

Thomas.Nedland@Wisconsin.gov [Blockedmailto:Thomas.Nedland@Wisconsin.gov](mailto:Thomas.Nedland@Wisconsin.gov)

[Blockedhttp://dnr.wi.gov](http://dnr.wi.gov) dnr.wi.gov

[Blockedhttp://facebook.com/WIDNR](http://facebook.com/WIDNR) [Blockedhttps://twitter.com/WDNR](https://twitter.com/WDNR)

[Blockedhttp://www.youtube.com/user/WIDNRTV](http://www.youtube.com/user/WIDNRTV)

[Blockedhttps://public.govdelivery.com/accounts/WIDNR/subscriber/new](https://public.govdelivery.com/accounts/WIDNR/subscriber/new)

WETLAND BANK MANAGEMENT AND EASEMENT AGREEMENT

This Wetland Bank Management and Easement Agreement (the "Easement") is dated [REDACTED], 2019, by and between [REDACTED]
[REDACTED]
[REDACTED] (hereinafter referred to as the "Grantors"), and [REDACTED]
[REDACTED], a Minnesota limited liability company, (hereinafter referred to as the "Company") and (collectively the "parties") and (sometimes individually the "party").

RECITALS

A. Grantor [REDACTED] is the owner in fee simple of the northeast parcel (PID No. [REDACTED]) (Exhibit "A"), Grantors [REDACTED] are the owners in fee simple of the southern parcels (PID Nos. [REDACTED]) (Exhibit "B") and Grantors [REDACTED], Trustees of the Trust Agreement of [REDACTED], are the owners in fee simple of the northwest parcel [REDACTED] (Exhibit "C") of the Bank Site totaling approximately [REDACTED] acres located in [REDACTED] County, Minnesota.

B. Grantors desire to grant, transfer and assign their interest in the Easement to the Company and the Company desires to accept the grant, transfer and assignment of the Easement.

C. The Company shall enter into an agreement with the U.S. Army Corps of Engineers (the "Corps") to establish the [REDACTED] Wetland Mitigation Bank in [REDACTED] County, Minnesota referred to as the Mitigation Banking Instrument (the "MBI").

D. As part of the Grantors grant to the Company, the Company agrees to be responsible for specific items that are Grantors obligations under the Easement and the Company is to be the sole benefactor of any and all wetland credits to be in a wetland bank resulting from the Easement.

E. Grantors shall execute a Perpetual Conservation Easement for the Wetland Easement to the State of Minnesota Board of Water and Soil Resources.

F. The parties desire to enter into this Agreement regarding the obligations of the Company under the Easement and to address the wetland credits.

AGREEMENT

In consideration of the mutual covenants, duties and obligations contained herein, the parties agree as follows:

1. **Incorporation; Capitalized Terms.** The foregoing Recitals are a material part of this Agreement and are incorporated herein. Capitalized terms not defined in this Agreement shall have the meaning assigned in the Easement.

2. **Grant of Easement.** Grantors grant, transfer, assign and warrant to the Company all right, title and interest in and to the Easement. Grantors hereby grant to the Company for the term and on the conditions set forth herein, a non-exclusive easement over, under, on, and across the Wetland Bank Property for the purpose of creating, maintaining, operating, repairing, managing, and restoring the Wetland Bank in accordance with the MBI, including the generation and sale of wetland credits from the Wetland Bank.

3. **Company Obligations under the Easement.** The Company agrees to be responsible, at the sole cost of the Company, for the following items under the Easement (the "Company obligations"):

- a. The Company shall maintain wetlands and upland buffers within the Bank Easement Area as specified in the MBI approved by the Corps. The wetland and any upland buffer area shall be the size and type specified in the MBI.
- b. The Company shall pay the costs of maintenance, repairs and reconstruction of the wetlands and upland buffers within the Bank Easement Area, which the Corps or the State may deem necessary to comply with the specifications of the Bank Easement Area in the approved bank plan except for any maintenance, repairs and reconstruction that are the result of the actions or omissions of the Grantors, its agents and/or invitees.
- c. The Company shall maintain visible monuments such as signs, numbered fence posts or survey posts at prominent locations along the boundary of the Bank Easement Area in accordance with the approved bank plan and in compliance with the Easement.
- d. The Company shall provide for weed control by complying with noxious weed

control laws and emergency control of pests necessary to protect the public health of the Bank Easement Area.

4. **Grantors' Obligations under the Easement.** The Grantors shall be solely responsible, at its sole cost, any and all obligations it may have under the Easement that are not expressly the Company's obligations.

5. **Indemnification.** The Company agrees to indemnify and hold harmless the Grantors for any and all claims that arise against the Grantors as a direct result of the Company's acts or omissions in exercising its Company obligations.

6. **Wetland Bank Credits.** The wetland bank credits that are part of the bank plan (defined in the Easement) are the full and sole property of the Company and Grantors shall have no right or claim to the said wetland bank credits.

7. **Right to Enter the Bank Easement Area.** The Company shall be allowed to access and enter the Bank Easement Area for the purpose of fulfilling and complying with the Company obligations for the MBI approved by the Corps. This right of access and entry shall extend to all other governmental entities having jurisdiction over the Bank Easement Area, including, but not limited to, Board of Water and Soil Resources, [REDACTED] County and the Corps.

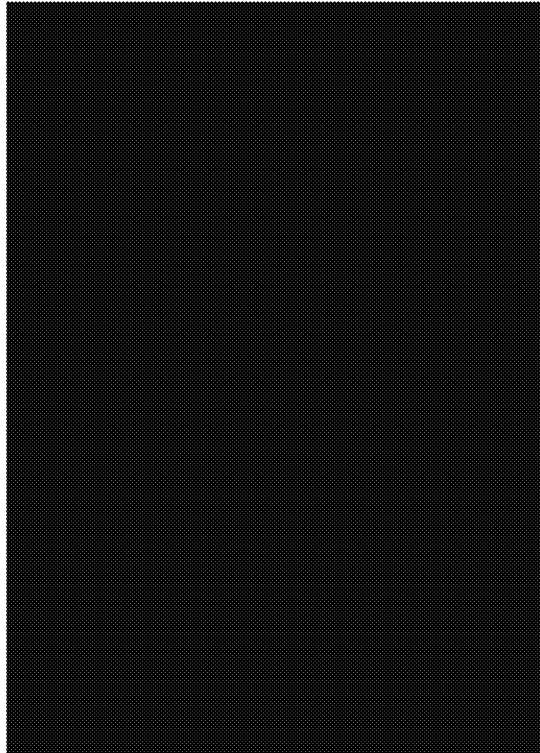
8. **Miscellaneous Terms.**

- a. Entire Agreement. This Agreement and any attached exhibits shall constitute the entire agreement between the parties regarding the matters contemplated under this Agreement and supersedes any other written or oral agreements between the parties regarding said matters. This Agreement can only be modified in writing signed by the parties.
- b. Time of Essence. Time is of the essence in this Agreement.
- c. Binding Effect. This Agreement binds and benefits the parties and their successors and assigns and is intended to and does run with the land.
- d. Controlling Law. This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- f. Severability. In the event any part of this Agreement is found to be void, the

remaining provisions of this Agreement shall nevertheless be binding with the same effect as though the void parts were deleted.

- g. Effective Date. The effective date of this Agreement shall be the last date on which it is executed by any party to this Agreement (the "Effective Date"). This Agreement shall not become effective until it has been executed by all parties to the Agreement.
- h. Notice. Any notice, demand, request or other communications which may or shall be given or served by the Company to or on the Grantors, or by the Grantors to or on the Company, shall be sent by hand delivery, by United States Mail, registered or certified, return receipt requested, postage prepaid, or by nationally recognized overnight courier service for next business day delivery and shall be deemed given on the date of acceptance or refusal of acceptance and shall be addressed as follows:

If to Grantors:



If to the Company:



The above addresses may be changed at any time by the parties by notice given in the manner provided above.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the

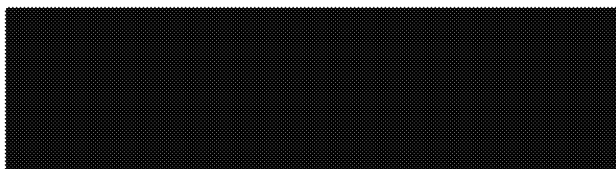
Effective Date.

GRANTORS:

COMPANY:



This instrument drafted by:



The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

STATE OF MINNESOTA)
) ss.
COUNTY OF [REDACTED])

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____.

SIGNATURE OF NOTARY PUBLIC

ED_005814A_00000085-00014